

Code of Professional Conduct for Financial Advice Services

Submission Template

Submissions close Monday 30 April 2018

Please send submissions to:

code.secretariat@mbie.govt.nz or

Code Working Group
c/o Code Secretariat (Poppy Haynes and Max Lin)
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Submissions process

The Code Working Group (CWG) seeks written submissions on the issues raised in this document by **5pm on Monday 30 April 2018**

We welcome submissions on any or all consultation questions. You are welcome to comment only on the issues most relevant to you.

Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please direct any questions that you have in relation to the submissions process to code.secretariat@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform the CWG's development of the draft Code. We may contact submitters directly if we require clarification of any matters in submissions.

Release of information

The CWG intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. The CWG will consider you to have consented to publication of your submission, unless you clearly specify otherwise in your submission.

If your submission contains any information that is confidential, or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

Submissions remain subject to request under the Official Information Act 1982. Please set out clearly in the cover letter or e-mail accompanying your submission if you have any objection to the release of any information in the submission, and in particular, which parts you consider should be withheld, together with the reasons for withholding the information. The CWG will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.

Private information

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals. Any personal information you supply to the CWG in the course of making a submission will only be used for the purpose of assisting in the development of the draft code. Please clearly indicate in the cover letter or e-mail accompanying your submission if you do not wish your name, or any other personal information, to be included in any summary of submissions that the CWG may publish.

Information about you

<i>Share your details</i>	
i.	<p>Please provide your name and (if relevant) the organisation you represent</p> <p>Simon O'Connor, CEO Responsible Investment Association Australasia</p>
ii.	<p>Please provide your contact details</p> <p>Phone: S 9 (2) (a)</p> <p>Postal: Level 9, 387 George Street Sydney NSW 2000 Australia</p>

iii. Please provide any other information about you or your organisation that will help us understand your perspective (e.g. the financial advice situations you have experience with)

RIAA is the peak industry body representing responsible and ethical investors across New Zealand and Australia. RIAA has over 200 members who manage well in excess of \$5 trillion assets under management globally. RIAA works to see more capital being invested more responsibly, working to shift capital into sustainable assets and enterprises, and shape responsible financial markets, to underpin strong investment returns and a healthier economy, society and environment.

In NZ and globally, Responsible investing has grown significantly. As highlighted in the RIAA 2017 Responsible Investment NZ Benchmark Report, approximately \$131 billion of assets are managed in a responsible manner. For the calendar year 2016, this included a 2500% increase in fund managed adopting a core (primarily screened) approach which reflected the adoption of RI policies by many KiwiSaver providers. Consumer research carried out by RIAA in late 2016 highlighted the fact that the majority of New Zealanders want to see their fund managers and KiwiSaver providers take into account environmental, social, governance (ESG) and ethical factors when investing.

Empirically, there is compelling evidence to suggest that incorporating ESG factors whilst investing leads to better risk adjusted returns¹.

Our membership includes individuals and organisations across the full investment value chain — from financial advisers and adviser groups to fund managers and KiwiSaver providers. RIAA's New Zealand membership as at April 2018:

- financial advisers - Henry Ford, Janet Natta, Jocelyn Weatherall, Jonathan Neal, Peter Lee, Richard Knight, Rodger Spiller;
- adviser groups - Saturn Portfolio;
- trusts and foundations - Foundation North, Otago Community Trust, Trust Waikato;
- KiwiSaver providers and fund managers - Medical Assurance Society, AMP Capital Investors (New Zealand) Limited, ANZ Investment, Booster Investments, Devon Funds Management, Kiwi Wealth, Milford Asset Management, Mercer (N.Z) Limited, NZ Methodist Trust Association, Pathfinder Asset Management;
- sovereign wealth fund - NZ Superannuation Fund;
- Asset owners - Anglican Church Pension Board
- professional services and consultants - KPMG NZ, Giving Architects, The Investment Store; and
- supporting individuals.

A full list of RIAA membership is available [here](#).

RIAA has long been an advocate for an investment industry, including financial advice providers, that embed a responsible approach to investment advice, that in particular:

- seeks to **understand the full range of client investment expectations**, including any values-based interests and expectations
- is **fit-for-purpose**, advice strategies are well document, honest, accurate and fees charged are reasonable and fully transparent;

	<ul style="list-style-type: none"> • is able to provide options that are suitable for the client, which includes investment products whose managers give consideration to the ethical considerations as well as environment, social and governance (ESG) matters alongside more traditional financial metrics such as risk and valuation; • enables consumer choice though facilitating easy comparison between different funds offering, and if need, the ability to switch between funds in an informed and frictionless manner; • is provided by professionals that undertake a program of continual development and remain abreast of developments of interest to client, such as ethical or responsible investing. <p>RIAA fully supports and works towards ensuring clients and client needs and expectations are at the centre of sound investment advice and decision making.</p>
iv.	<p>Please indicate whether your submission contains any information that is confidential or whether you do not wish your name or any other personal information to be included in a summary of submissions. (See page 2 of this document)</p> <p>No, it does not contain information that is confidential.</p>

Principles for drafting the Code

<i>Share your views</i>	
A.	<p>What comments do you have regarding the overarching theme of “good advice outcomes” and the underlying principles?</p> <p>The overarching theme of “good advice outcomes” is sound. However, by setting this principles-based outcome, there is a very large burden of responsibility put upon the financial adviser in demonstrating how this is met. Furthermore, there is a large downside risk created because of the assumption that advisers share the same world view of “good”, “advice” and “outcomes”, “good advice”, “advice outcomes” and “good outcomes”.</p> <p>Providing guidance would help shape minimum performance expectations, as well as provide example of leading practice and some in between.</p> <p>For example, RIAA’s consumer research highlights the expectations of New Zealanders to have their values and ethics considered as part of their investments, and as such, we believe good advice outcomes cannot be achieved without advisers explicitly seeking to understand and consider the values and ethical perspectives of their clients in the provision of advisory services.</p> <p>Accordingly, this would lessen the burden on the financial adviser</p> <ul style="list-style-type: none"> • In providing a control over the risk created in the assumption that advisers homogenously regard the overarching theme of “good advice outcomes” • Demonstrating compliance with the Code.

	Noting the Principles of the Code, we believe that the final Code should also include guidance notes to assist advisers/adviser firms in achieving good advice outcomes. This should include reference to identifying client values (and ethical requirements) and how this translates to advice outcomes (e.g. investment portfolios). For example, “are there any ethical considerations I need to take in to account when constructing your investment portfolio”?
B.	Are there any further principles that should be included, or existing principles that should be removed?

Ethical behaviour

Act with honesty, fairness and integrity

<i>Share your views</i>	
C.	<p>Do you agree with a requirement to act with honesty, fairness and integrity? If not, please set out your reasoning.</p> <p>RIAA agrees; the social contract between adviser and client is built on trust and the principles of honesty, fairness and integrity are key.</p> <p>Ethical behaviour can also be extended to the idea that clients are only provided services that they need, not that are marketed or pushed-upon them. Accordingly, the Code WG could consider the addition of ethical behaviour to include “fit for purpose”, or to explicitly expand the understanding of integrity to account for this.</p>

Keep the commitments you make to your client

D.	Should minimum standards for ethical behaviour for the provision of financial advice extend beyond strict legal obligations, to include meeting less formal understandings, impressions or expectations that do not necessarily amount to strictly legal obligations? If no, please give reasoning. If yes, please propose how a standard for such commitments might be framed.
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E.	<p>If there was a minimum standard requiring Financial Advice Providers – or Financial Advice Providers in some situations – to have their own code of ethics in addition to the Code, how would you frame the requirement for it to deal with keeping commitments?</p> <p>The Code WG could provide guidance notes on how Financial Advice Providers would structure their own codes of ethics, such as:</p> <p><i>We believe this..... therefore we do this..... to know that we are doing this, you would expect to see this... (provide examples of this in action and/or outcomes of successful behaviours, client expectations met etc.).</i></p> <p>Furthermore, the guidance should suggest that codes of ethics also contain an independent service provider to handle the registration of client concerns and grievances.</p> <p><i>If you find that are we not acting consistent with this Code of Ethics, you have the right to register your concerns here.</i></p>
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Manage and fully disclose conflicts of interest

F.	<p>Should the Code include a minimum standard on conflicts of interest in addition to the legislation?</p>
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Do no harm to the client or the profession

G.	<p>Do you agree that a person who gives financial advice must not do anything or make an omission that would or would be likely to bring the financial advice profession into disrepute? If not, please set out your reasoning.</p>
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H.	<p>Is an additional minimum standard on doing no harm to the client necessary? If so, what standard do you propose?</p> <p>Yes.</p> <p>Following the KiwiSaver scandal of August 2016, many New Zealanders were alarmed, dismayed and even outraged to find out their savings were growing on the back of activities that were inconsistent with their own values, such as manufacturing and sale of cluster munitions, whale meat and tobacco products.</p> <p>RIAA’s consumer research (<i>Responsible Investment report prepared for RIAA, Oct. 2016</i>) revealed:</p> <ul style="list-style-type: none"> • The overwhelming majority of New Zealanders (81%) believe that it is important that KiwiSaver funds consider environmental, social and/or ethical factors along with financial analysis when investing • 55% of New Zealanders would be most likely to invest in a KiwiSaver fund that is certified by an independent body as a ‘Responsible or Ethical Investor’. <p>Whilst not all advisers are helping place New Zealanders’ savings into KiwiSaver schemes, RIAA’s consumer research shines a light on societal norms and the great divide between what New Zealanders want from their investments and what is being provided by the industry – advisers and product providers.</p> <p>Although the industry has come a long way since then, with most fund managers employing increasingly more comprehensive responsible investment policies to ensure there are no holdings in illegal activities (such as financing cluster munitions), it still stands that New Zealanders believe it’s important that their savings and investments consider environmental, social and/or ethical factors along with financial analysis when investing – i.e. that their investments as a minimum do not create any harm.</p> <p>RIAA is concerned that if this is not explicitly factored into the requirements for financial advisers at this stage to ensure that clients’ investments are as a minimum not creating harm, that this market failing will not be addressed in other ways. Ideally, we would like to see that the Code requires Financial Advisers and Financial Advice Providers MUST take in to account a client’s values (ethical requirement) into the advice process and advice outcomes.</p>
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Keep your client’s data confidential

I.	In which situations, if any, should the retention, use or sharing of anonymised bulk customer data be subject to Code standards?
J.	Do you agree that the Code should cover the various aspects of maintaining client confidentiality discussed in this paper?

K.	Are there other aspects of maintaining client confidentiality to consider?
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Ethical processes in Financial Advice Provider entities

L.	Do you agree that the Code should require the Financial Advice Provider to document and maintain its “ethical processes”?
M.	Should the Financial Advice Provider be required to have a publicly available corporate code of ethics? Are there particular situations where a corporate code of ethics should be or should not be required?
N.	Should Financial Advice Providers also be subject to additional standards in respect of leadership and culture? If so, how should these be framed?
O.	Do you propose other additional standards of ethical behaviour that should apply to Financial Advice Providers?

Ethics training

P.	Do you agree that Financial Advice Providers should be required to meet standards relating to ethics training? If not, please state your reasoning.
Q.	Should ethics training requirements apply to all officers and employees of a Financial Advice Provider, as appropriate to their role and contribution to the process of financial advice provision? If not, please state your reasoning.
R.	Should there be a requirement for ongoing refresher training on ethics?

Resolving ethical dilemmas

S.	Do you agree that Financial Advice Providers should be required to have in place, and use, a framework for resolving ethical dilemmas that may arise in giving financial advice? If not, please set out your reasoning.
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Compliance functions

T.	Should there be a requirement for explicit sign-off on the soundness of financial advice provided directly by a Financial Advice Provider?
U.	Do you agree that Financial Advice Providers should be required to have in place a compliance function aimed at following up on concerns raised by employees and other stakeholders? If not, please set out your reasoning.
V.	Should this extend further into an internal audit obligation, having in place processes to systematically test for and detect violations of ethical behaviour?
W.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

Responsibility for the whole advice process

X.	Do you agree that Financial Advice Providers should be required to be able to demonstrate that they meet the standards of ethical behaviour as if the Financial Advice Provider carried out the whole advice process directly itself? If not, please set out your reasoning.
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Reinforcing good ethical behaviour

Y.	What principle or mechanism do you propose the Code could include to reinforce good ethical behaviour on a day-to-day basis?
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Conduct and client care

Advice situations

<i>Share your views</i>	
Z.	Are there other delivery methods that should be considered when testing our thinking?

Advice-giving standards

AA.	How do the current client care standards work in practice, especially in advice-giving situations not previously covered by the AFA Code? In answering this question, please ignore “scope of advice” (CS-8) and “suitability” (CS-9 and part of CS-10).
BB.	Could any aspect of the current client care standards be worded better? (For example, we are aware that the definition of “complaint” could be improved.)
CC.	Are there any aspects of the current client care standards that could be expanded or clarified (for example, in light of the published findings of the Disciplinary Committee)?
DD.	Are there any potential compliance costs for small and/or large Financial Advice Providers that need to be considered?

EE.	<p>Are there any additional matters that should be addressed in the advice-giving standards? Those listed above? Others?</p> <p>Knowing your client: we believe it to be critical that advisers are given appropriate guidance in the standards as to the minimum requirements around giving advice, in particular in regards to the fact find process of gathering client information that informs the advice.</p> <p>In light of what we know through consumer research to be the preferences of New Zealanders in regards the incorporation of values and ethics into financial products, it is our view that to properly provide advice that is suitable to clients (that shows proper and full knowledge of the client), questions of values and ethics must be included in any fact finding process. Advisers should all be required to ask their clients whether they have any values that they would want reflected in the advice provided (e.g. not profiting from investments in tobacco companies) or any sustainability preferences that should be incorporated.</p> <p>This follows a shift occurring in leading global markets such as the recent European Commission Action Plan for Financing Sustainable Growth (March 2018), whereby one such action includes the enhanced consideration of sustainability preferences in the suitability assessment process of financial advisers. This will require financial advisers to fully assess clients’ investment objectives and risk tolerance in order to recommend suitable financial instruments but in addition will be amended to require the advisers to ask their clients’ preferences in regard environmental, social and governance factors and take them into account when assessing the range of financial instruments and products to be recommended.</p>
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Advice process

FF.	<p>Do you think there are any other components that should be included in the design considerations of an advice process?</p> <p>With respect to GG, a model Fact Find should be included in the design consideration of an advice process and it is essential that this model fact find include guidance for advisers on asking clients their preferences with regards ethics, values and sustainability preferences of clients.</p> <p>Completed Fact Finds should form part of the record keeping requirements which demonstrate that financial advice providers have satisfied compliance with the principles of providing good client outcomes.</p>
GG.	<p>Should the Code include guidance material to help determine what needs to be considered when designing an advice process?</p> <p>Whether guidance material forms part of the Code or is referenced within the Code, and managed externally to the Code, RIAA supports the provision of it. Guidance can:</p> <ul style="list-style-type: none"> • form a useful hygiene test for advisers • provide a proxy for setting minimum expectations of the scope and quality of advice provided

	<ul style="list-style-type: none"> • maximise the likelihood that advisers demonstrate the extent to which they have delivered good client outcomes.
HH.	<p>Are there any other important aspects you think should be included in the advice process for all types of financial advice activities under the new regime?</p> <p>With a view to helping advisers more fully consider and deliver to “better client outcomes” it would be prudent for the advice process to explicitly contain the step whereby the adviser seeks to <i>fully</i> understand the interests and expectations of the client, including:</p> <ul style="list-style-type: none"> • any <u>values</u> that may impact on the advice given • showing how choosing products that consider ethical issues and <u>ESG integration</u> produces better risk adjusted returns
II.	Should any of the key aspects that we have listed above be removed? If so, why?
JJ.	Are there any situations in which an advice process need not be followed?

Personalised suitability

KK.	<p>What comments do you have about a proposed minimum standard on personalised suitability analysis? What are your views on the example above?</p> <p>Whilst acknowledging the need to make advice more affordable and accessible, we are extremely mindful of the importance that values play on the decisions made by clients of all sizes and complexity. We therefore believe that it is important that the Code recognizes and highlights the importance of client values in ALL cases.</p> <p>For example, in situations where advice may be limited (e.g. advice on a KiwiSaver product), we believe that the client's values should be taken in to consideration. A good outcome should not necessary be difficult to achieve (noting the large shift by KiwiSaver providers to Responsible Investing and ESG integration).</p> <p>In more complex (personal suitability) cases, we believe that the argument is compelling for a client's values to be taken into consideration. This is implied by the current code standards (9 and 10, and for that matter, 1). Ideally, taking in to account client's values and ethics can be included in the new Code (or at the very least in guidance notes to accompany the Code).</p>
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Organisational standards

LL.	<p>What are the practical advantages and disadvantages of including organisational standards as described? What explanatory material or examples could we provide in the Code that might help to make these standards easier to comply with in practice?</p>
MM.	<p>Would implementing these organisational conduct and client care standards create a particular compliance burden for your firm? If yes, please explain why.</p> <p><u>Fact find</u> including questions to demonstrate scope has been explored to include asking about values that should be reflected in the advice provided.</p>

General competence, knowledge and skills

<i>Share your views</i>	
NN.	Do you agree with our interpretation of the meaning of “competence, knowledge, and skills”? If not, why not?
OO.	Are there other factors, which contribute to combined expertise , that we have not listed? We are particularly interested in factors that are relevant to financial advice that is given by a Financial Advice Provider directly, including by digital means.
PP.	What do you think are the advantages of this approach to general competence, knowledge and skills?
QQ.	What do you think are the disadvantages of this approach to general competence, knowledge and skills?
RR.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
SS.	What factors should we consider in determining whether to make the proposed unit standard a renewing obligation?

Particular competence, knowledge and skills

<i>Share your views</i>	
TT.	What are the advantages and disadvantages of our approach of identifying two types of financial advice? What impact would it have on the type of advice you give and on your compliance costs?
UU.	How should RFA’s experience be recognised?
VV.	What do you think are the advantages of this approach to particular competence, knowledge, and skill?
WW.	What do you think are the disadvantages of this approach to particular competence, knowledge, and skill?

XX.	In what ways do you think this proposed standard contributes to, or detracts from, the legislative purposes (for example ensuring the quality and availability of advice, avoiding unnecessary compliance costs, and promoting innovation and flexibility)?
YY.	<p>What alterations, if any, would you suggest to the baselines we have nominated: specialist strand for product capability, Level 5 for discipline capability, and relevant degree (or other degree plus Level 6) for planning capability?</p> <p>We believe that education on Responsible Investing should be included in the relevant strands of the curriculum for the NZ Certificate in Financial Services (Levels, 4, 5 and 6). This could, for example, be included as a subset of the strands on Investment and Financial Advice.</p>

Other comments

Share your views

ZZ. Are there any other comments you would like to make to assist us in developing the Code?

General comments about the level of scope and ambition of this regulatory revision to set up relevant and sound advice outcomes for many years to come.

The **European Commission High-level Expert Group on Sustainable Finance Final Report (HLEG)** provided a number of recommendations that have been accepted by the EU as outlined in the European Commission Action Plan for Financing Sustainable Growth and are now being implemented across to the EU and by individual member countries. RIAA recommends the Code Working Group to review the contents of this as it applies to the provision of advice and the desire to provide a financial system based on the principle of consumer-centricity, particularly those elements referenced above.

The **UN backed Principles for Responsible Investment** provided input into the **EU Action Plan** for financing sustainable growth which responds directly to the HLEG Report. Specifically, RIAA commends to the Code Working Group the PRI's own briefing papers on the Action Plan, and specifically the commentary regarding Action 4: Incorporating Sustainability When Providing Financial Advice. The reasoning and resultant outcomes are highly aligned with the intent of this review.

In short, there is a movement afoot globally to ensure advisers and other fiduciaries are more explicitly incorporating the values, ethics and sustainability preferences of clients as part of proposing more suitable financial advice and pension products. It is timely that NZ is looking at this and a strong opportunity to include the same or similar requirements as are seeing in the EU into the Code. Certainly, we are witnessing strong and clear signal by New Zealand consumers of their desires to align their investments with their values; any leading professional conduct to provide financial advice services would be incomplete without advisers being required to respond to these preferences of clients.

Additionally, we would draw the Code Work Group's attention to the RIAA Certified Financial Adviser program that contains clear guidance and requirements for financial advisers to be equipped and qualified to deliver responsible and ethical investment advice to clients. The key pillars of these requirements on this program that has been in place for over a decade, include but are not limited to:

1. **Are legal and professional:** Hold relevant financial services licences and are members of a professional body; and
2. **Are Trained and/or Experienced:** have completed the RI Essentials online course offered by the PRI Academy OR have at least two years' relevant experience providing responsible investment advice and can demonstrate how they stay up to date on developments in RI; and
3. **Promote RI Services:** undertake to promote RI options to ALL clients by, as a minimum, including appropriate questions on responsible investing in their Fact Find (or equivalent) and are able to perform the interview process should clients express an interest in investing responsibly (consistent with our recommendations above); and
4. **Provide RI Products:** can demonstrate that they ably research and offer RI products, having RI products on their Approved Product List (or equivalent).

We believe that these requirements ensure a strong minimum standard of skills and expertise to appropriately service clients in consideration of all the factors clients need understood.

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- RIAA (2017), [*Responsible Investment Benchmark Report New Zealand*](#);
- Deutsche Asset and Wealth Management (2015), [*ESG and Corporate Financial Performance: mapping the global landscape*](#);
- Oxford University and Arabesque Partners (2015), [*From the Stockholder to the Stakeholder*](#);
- Kotsantonis, Sakis, Christopher Pinney, and George Serafeim (Harvard Business School) [*ESG Integration in Investment Management: Myths and Realities*](#), [*Journal of Applied Corporate Finance*](#) 28, no. 2 (Spring 2016): 10–16;
- Verheyden, T., Eccles, R. G., & Feiner, A. (2016), [*ESG for All? The Impact of ESG Screening on Return, Risk, and Diversification*](#), [*Journal of Applied Corporate Finance*](#), 28(2), 47-55, 2016;
- Nagy, Z., Kassam, A. & Lee, Linda-Eling. (2016) [*Can ESG Add Alpha? An Analysis of ESG Tilt and Momentum Strategies*](#), [*Journal of Investing*](#), Vol. 25, No. 2, pp. 113-124; and
- Statman, M., & Glushkov, D. (2016). [*Classifying and Measuring the Performance of Socially Responsible Mutual Funds*](#), [*Journal of Portfolio Management*](#), 42(2), 140-151.